IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 2155 of 2005

Nishet Louis Pareira ..Petitioner

vs.

1. The Collector, Kolhapur
District Kolhapur and ors. ..Respondents

Shri P.D.Dalvi for petitioner.
Shri V.P.Malvankar, A.G.P. for respondent nos.1 to 5.
Shri T.S.Ingale for respondent no.6.

CORAM: A.P.SHAH &
Dr.D.Y.CHANDRACHUDL JJ.
5th August,2005,

P.C.

. Rule. Learned Counsel appearing for the respondents waive service.

. By consent, rule is made returnable forthwith.

. The petitioner is Project Affected Person. He was resident of village Konoli in Radhanagari Taluka of Kolhapur district. The village Konoli was affected due to irrigation project which was constructed across the river Dudhganga near Kalammawadi in Radhanagar Taluka of Kolhapur district. The State Government initiated acquisition proceedings under the Land Acquisition Act, 1894 and acquired the lands of the persons

whose lands came under the command area of Dudhganga Project for rehabilitation of the Project Affected Persons.

. The land bearing Gat No.581-A admeasuring 0.81 Ares of village Konoli comes under Dudhganga Project and was acquired by the State Government for rehabilitation of Project Affected Persons. After completion of acquisition, the Government took land Gat No.581A in Government pool and some time in the year 1998 the said land was allotted to the petitioner as he was Project Affected Person. The land was handed over to the petitioner in the year 1998 itself.

. Respondent no.6 who was the erstwhile owner of the land bearing Gat No.581-A filed an Appeal before the Additional Commissioner, Pune Region, Pune bearing Appeal No.Rehabilitation/Office-3/Appeal/207/1999 under section 48(1) of the Land Acquisition Act and prayed that the said land which was given to the petitioner be dropped from the acquisition. In the Appeal, the petitioner was not made a party nor any notice was given to him at any point of time.

. The Appeal was disposed of by the Additional

Commissioner who vide his order dated 4th September, 2000 directed the Deputy Director to investigate whether Gat No.581-A, 581-B and 584 come under command area and if the land does not come under the command area then to take appropriate decision in accordance with law. However, if the land is already taken by the Government then the acquisition shall be confirmed.

. In the instant case, Gat No.581A was taken in possession by the Government in the year 1998 and was allotted to the petitioner. Therefore, as per the decision of the Commissioner, the acquisition was liable to be confirmed. The Collector of Kolhapur, however, by impugned order dated 20th January, 2005 directed cancellation of allotment made in favour of the petitioner and to take back the possession of the land from the Project Affected Person and hand over the same to its erstwhile owner.

. We have heard the learned Counsel appearing for the parties. Shri Dalvi, learned counsel appearing for the petitioner submitted and, in our opinion rightlhy, that the order of the Collector is totally illegal and contrary to the provisions of the Land Acquisition Act. Once the possession of

the land is taken by the Government, then the land would vest in the Government and the Government has no jurisdiction to release the land under sec.48(1) of the Land Acquisition Act. In the present case the land was acquired by the Govt. and kept in Govt. pool and thereafter allotted to the petitioner. In other words right, title and interest in the land is already vested in the petitioner. The Collector has, therefore, no jurisdiction whatsoever to pass an order under sec.48(1) of the Land Acquisition Act. The order dated 20th January, 2005 is, therefore, quashed and set aside. The Collector is directed to restore the possession of the land to the petitioner within a period of 4 weeks from today. Rule is made absolute accordingly with no order as to costs.